**Shareholders Agreement –**

**Protection of a Minority Shareholder**

**(1)** **<<Name of Majority Shareholder A>>**

**(2)** **<< Name of Minority Shareholder B >>**

And

<<Name of Company >> (The “Company”)

SHAREHOLDERS AGREEMENT

**This Agreement is dated** <<date>>

**Between:**

1. <<Insert Shareholders name e.g. John Dunne or ABC Limited >> of <<insert Shareholders address >> **OR** a company registered in the Republic of Ireland under << insert company registration number >> whose registered office is at << insert registered address >> of (**“Shareholder A” “the Majority Shareholder”**); and
2. << Insert Shareholders name e.g John Dunne or ABC Limited >> of<<insert Shareholders address >> **OR** a company registered in the Republic of Ireland under << insert company registration number >> whose registered office is at << insert registered address >> (**“Shareholder B” “the Minority Shareholder”**).

The background to this agreement is:

1. The Company was incorporated in the Republic of Ireland under registration number <<insert number>> to operate a << type of business >>.
2. The Company is a private limited company and at the date of this Agreement has an issued share capital of €<<insert issued share capital>>
3. Shareholder A (the **“Majority Shareholder”**) is the registered and beneficial owner of <<insert number of shares owned>> shares of the Company issued as fully paid, and Shareholder B (the **“Minority Shareholder”**) is the registered holder of <<insert number of shares owned>> shares issued as fully paid.
4. The Parties have agreed these terms in order to regulate the relationship between them.
5. In the event of a conflict between the Shareholders, this Shareholders Agreement takes precedence over the Constitution of the Company.

These are the terms of the agreement:

# Definitions

These definitions apply unless the context requires a different interpretation:

|  |  |
| --- | --- |
| **"Act"** | means the Companies Act 2014 and any subsequent additions, amendments or related regulations. |
| **“Auditors”** | means the auditors from time to time of the Company |
| **“Board”** | means the Board of Directors of the Company |
| **"Business"** | means the business of <<state nature of business concisely>> |
| **“Clear Days”** | means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect; |
| **“Company”** | means the Company and such other companies as are now and may hereafter be subsidiaries of the Company for the time being |
| **“Confidential Information”** | means all information, including:  personal data, as defined in applicable law, owned by any data subject whom a party to this agreement may contact in relation to the subject matter of this agreement or the business of the Company.  information which may give a commercially competitive advantage to any other person.  It includes among other things:  information about staff, their performance and their personal contact information,  data or information relating to suppliers, product plans, marketing strategies, finance, performance, operations, customer relationships, customer profiles, sales estimates, business plans;  information created or arising from this agreement;  information owned by a third party and in respect of which a party has an obligation of non-disclosure.  information, comment or implication published on any Internet social medium.  data or information relating to processes, formulae, procedures, designs, drawings, apparatus, specifications, and all other scientific and regulatory data;  information about the Intellectual Property and the know-how of the Company.  It does not include information that it is reasonably necessary to disclose to a customer or other person in the usual course of business so far as that information is disclosed in those circumstances. |
| **“Connected person”** | means in relation to any party hereto (a) the spouse or child of that party or (b) a person acting in his/her capacity as trustee of any trust the principal beneficiaries of which are that party, his/her spouse or any of his/her children or (c) any body corporate wholly owned by such party, spouse, child or trust |
| **“Constitution”** | means the constitution of the Company |
| **"Director"** | means a director of the Company. |
| **[“Drag Along Notice”** | means a notice given by a majority shareholder requiring all remaining shareholders to sell their shares in accordance with Clause 23.**]** |
| **[“Drag Along Rights”** | means the rights conferred by Clause 23.**]** |
| **"Fair Price"** | means the price of Sale Shares or Transfer Shares certified by an independent accountant instructed for the purpose of such valuation and based on the letter of instruction set out in Schedule 3. |
| **“Financial Year”** | means the accounting period between <<month>> and <<month>> of each calendar year. |
| **"Intellectual Property"** | means intellectual property of every sort, whether or not registered or registrable in any country, including intellectual property of all kinds coming into existence after today; and including, among others, patents, trademarks, unregistered marks, designs, copyrights, software, domain names, discoveries, creations and inventions. |
| **“Minority Shareholder”** | means Shareholder whose shareholdings constitute less than <<insert percentage e.g. 51>> % of the Company’s issued share capital at that time. |
| **“Ordinary Shares”** | means ordinary shares carrying voting rights and equal entitlements to dividends and capital. |
| **“Permitted Transfers”** | means transfers by a shareholder of his/her shares to a Connected Person. |
| **“PR”** | means the personal representatives or other person in control of the affairs of a shareholder as a result of the happening of a Relevant Event. |
| **“Relevant Date”** | means the date of a Relevant Event. |
| **“Relevant Event”** | means any one of:  the death of a shareholder; or  the registration of an enduring power of attorney in respect of personal care or business affairs of a shareholder; or  the certification of a shareholder as a patient as defined in section 2 of the Mental Health Act 2001. |
| **“Relevant Shares”** | means shares which are owned by a shareholder whose affairs become subject to a Relevant Event. |
| **“Sale Price”** | means the price as agreed between the Seller and the Shareholder. |
| **“Sale Shares”** | means the shares which a shareholder wishes to sell. |
| **“Selling Shareholder”** | means the shareholder selling shares. |
| **“Shareholders”** | means the parties named in this Agreement and each of their successors, transferees or personal representatives. |
| **[“Tag Along Notice”** | means a notice given by a remaining minority shareholder(s) requiring all proposed transferees named in a Sellers Notice to purchase their shares in accordance with Clause 24.**]** |
| **[“Tag Along Rights”** | means the rights conferred by Clause 24.**]** |
| **“Transfer Date”** | means a date when a shareholder transfers shares, whether or not that transfer complies with the provisions of this agreement. |
| **“Transfer Notice”** | means a notice given by a shareholder specifying Sale Shares. |

# Interpretation

In this agreement unless the context otherwise requires:

* 1. a reference to a person includes a human individual, a corporate entity and any organisation which is managed or controlled as a unit.
  2. a reference to one gender shall include any or all genders and a reference to the singular may be interpreted where appropriate as a reference to the plural and vice versa.
  3. a reference to a person or party includes reference to that person's successors, legal representatives, permitted assigns and any person to whom rights, and obligations are transferred or pass as a result of a merger, division, reconstruction or other re-organisation involving that person.
  4. a reference to a paragraph or schedule is to a paragraph or schedule to this agreement unless the context otherwise requires. The schedules form part of this agreement.
  5. the headings to the paragraphs and schedules (if any) to this agreement are inserted for convenience only and do not affect the interpretation.
  6. unless the context requires otherwise, words importing the singular include the plural and vice versa, and pronouns importing a gender include each of the masculine, feminine and neuter genders.
  7. any agreement by any party not to do or omit to do something includes an obligation not to allow some other person to do or omit to do that same thing.
  8. except where stated otherwise, any obligation of any person arising from this agreement may be performed by any other person.
  9. a reference to the knowledge, information, belief or awareness of any person shall be deemed to include the knowledge, information, belief or awareness that person would have if he had made reasonable inquiries.
  10. a reference to an act or regulation includes new law of substantially the same intent as the act or regulation referred to.
  11. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any other language, the English language version shall prevail.

# Relationship of Parties

* 1. Nothing in this agreement shall create a partnership or agency or the relationship of employer and employee between any of the parties, though such relationships may be created by other means.
  2. This agreement contains the entire agreement between the parties and supersedes all previous agreements and understandings between the parties. Each party acknowledges that, in entering into this agreement, he does not rely on any representation, warranty or other term not forming part of this agreement.
  3. Each shareholder undertakes to use his/her best endeavours at all times to promote the interests, reputation and business of the Company.

# Constitution

The Shareholders each confirm and ratify the provisions of the Constitution to the exclusion of all prior and other provisions except as varied by this agreement.

# Completion

The parties agree to give effect to this Agreement immediately and in particular:

* 1. to conduct such business of the Company and sign such resolutions and minutes as may be necessary to provide for this agreement to become entirely effective.
  2. the Company shall not be obliged to issue shares to a shareholder unless payment of the specified price is made in respect of all of the shares which that shareholder has agreed to take up.

# Covenants concerning the Company

6.1 The following provisions shall take effect immediately upon Completion and shall continue in force with regard to each of the parties for so long as such Shareholder shall hold any shares in the capital of the Company and said parties agree and covenant to be bound by the said following provisions. Save as hereinafter expressly provided all rights and obligations of each of the parties hereto (other than the Company) under this Clause 6 shall subsist only for so long as such party shall continue to hold shares in the capital of the Company.

6.2 Each of the parties hereby covenants with one another that he or she or it as the case may be shall take all necessary actions (other than the investment of further monies) and exercise all such voting rights as he or she or it may from time to time have in the Company so as to procure (insofar as lies within his or her or its power of procurement individually or collectively with the others) that the Company shall comply in full with each of the matters set out in the succeeding clauses of this clause

* 1. The Company shall be managed and operated on a commercial and arm’s length basis.
  2. The Company shall carry on its business in an efficient and business-like manner and to its best advantage.
  3. The business of the Company shall be controlled by the Board and the Company shall not enter into any contract or transaction whereby its business would be controlled otherwise than by its Board.

# Special voting rights

* 1. Every reference on this agreement to a percentage of voting rights shall be construed as a reference to rights and percentages of the total number of issued shares, and not merely the number present and voting.
  2. A shareholder shall be treated as present, provided he/she is present either in person, by proxy, by alternate director or at a distance if the meeting so takes place.
  3. The foregoing provision does not apply to a vote on any issue not specifically mentioned in this agreement.

# Appointment and removal of Directors

* 1. The Board shall be constituted in accordance with the Constitution.
  2. The Board shall consist of no more than <<two (2)>> members who may be appointed and removed in accordance with this paragraph 8.
  3. Each shareholder who owns at least <<insert percentage>> % of the voting shares of the Company may be a director or may appoint a director. He/she need not do so.
  4. **[**If a shareholder shall reduce his/her holding of voting shares so that his/her residual holding is less than <<insert percentage>> % of all the voting shares of the Company, then he/she shall resign as a Director and the provisions of Clauses 25, 26 and 27 shall apply.**]**
  5. **[**Each Director must be a shareholder of the Company.**]**
  6. A Director may be removed by a vote to that effect at any meeting of the Company in accordance with Section 146 of the Companies Act 2014.

# Managing Director

* 1. The Managing Director of the Company shall be <<insert name>> **[**or, if he/she shall no longer be a Director, then such other person as the remaining Directors appoint.**]**
  2. **[**The Managing Director must be a shareholder of the Company.**]**

# Management

* 1. The Directors shall be responsible for the day-to-day administration and management of the affairs of the Company.
  2. Any question arising at any meeting of the Board shall be decided by a majority of votes of the directors present; where there is an equality of vote the Chairman at the meeting will have a casting vote.
  3. The Board will be entitled to resolve matters by written resolution of all the Directors.
  4. All Directors shall be entitled to appoint alternates to represent them at a board meeting in accordance with the Constitution.
  5. Meetings of the Board shall take place at such time or times as may be required or as requested by any of the Directors but not in any event at intervals of more than <<insert months e.g. 6>> months calculated from the date of this Agreement. Unless otherwise agreed in writing by all the Directors, at least <<insert days e.g. 10>> Clear Days’ notice in writing shall be given of each meeting of the Board. Such notice shall specify in as great a detail as is practicable the business to be considered at the meeting and, unless all the directors (or their duly appointed alternates) agree otherwise, no matters shall be resolved at any meeting of the Board except those specified in the notice of the meeting.
  6. The quorum necessary to constitute a meeting of the Board shall be two directors present in person. If a quorum is not present within <<insert time e.g. 1 hour>> of the time appointed for a meeting of the Board, the meeting shall be adjourned to the same time and place on the seventh day following the original meeting.

# Proxy votes

* 1. Any action or decision which may be taken by a shareholder at any time, may be taken by a proxy, appointed by him/her in his/her place.
  2. A shareholder may not appoint more than one proxy.
  3. **[**No person may act as proxy until his/her principal has given seven days’ notice of his/her appointment in hard or soft copy to the Company and/or not less than 48 hours’ notice to each shareholder**]**.

# Company's obligations

* 1. The Company undertakes with each of the Shareholders to:
     1. carry on the Business efficiently;
     2. ensure that any decision reasonably likely to affect the Business (apart from day-to-day administration) is taken by the Directors or by the Shareholders in general meeting;
     3. maintain insurances appropriate and usual for the Business and assets.
     4. buy, sell and deal at all times and in all circumstances at the best price and on most favourable terms reasonably available.
     5. keep accurate accounts and records of the Company and the Business and to make all information of every sort available to the Directors, in every case within a timescale appropriate to the subject matter;
     6. provide each Shareholder within 4 weeks of the end of each calendar month with monthly management accounts that will include the following:

12.1.6.1 Profit and Loss Statement

12.1.6.2 Balance Sheet

12.1.6.3 Cashflow

12.1.6.4 Aged Creditors Report

12.1.6.5 Aged Debtors Report

**[**12.1.6.6 Customer Listing**]**

* + 1. deliver to each Shareholder as promptly as reasonably practicable such additional financial or other information as may be requested by that Shareholder upon giving reasonable prior written notice;
    2. prepare and deliver to each Shareholder an annual plan and budget for the following year by the last day of month eleven (11) of the financial year (the **“Financial Year”**) end, said plan and budget to be agreed and adopted by all the shareholders <<in writing>> **OR** <<at general meeting>> before the end of each preceding financial year; and
    3. prepare such accounts in respect of each accounting reference period as are required by statute and procure that such accounts are audited and submitted to the Shareholders within 3 months after the end of the relevant accounting reference period.

# Shareholders' obligations

* 1. The Shareholders agree to exercise their powers in relation to the Company to procure that the Company complies with the letter and the spirit of its obligations under this Agreement.
  2. Each Shareholder undertakes with each of the other parties that whilst he/she remains a party to this Agreement he/she will not cast any of the voting rights exercisable in respect of any of his/her shares, under the instruction of any other person.

# Matters requiring consent of both Shareholders

* 1. The Shareholders shall exercise all the voting rights and other powers of control available to them respectively in relation to the Company so as to procure (insofar as they are able to do so by the exercise of those rights and powers) that the Company shall not do any of the following without the prior written approval of each Shareholder:

14.1.1 sell, transfer, lease, assign or otherwise dispose of a material part of, or any interest in, the undertaking, property or assets of the Company or any subsidiary, or contract to do so, whether or not for valuable consideration;

* + 1. except as expressly provided in this Agreement, do or permit or suffer to be done any act or thing whereby the Company may be wound up (whether voluntarily or compulsorily) unless the Company is insolvent;
    2. enter into any contract or transaction except in the ordinary and proper course of its business on arm's length terms;
    3. borrow or raise money (including the entry into any finance lease) except in the form of normal trade credit;
    4. lend, advance monies to or guarantee the indebtedness of any person, firm or corporation;
    5. provide financial assistance for the acquisition of shares or transactions with directors or others;
    6. provide loans to directors;
    7. approve Directors salaries;
    8. create any lease or financial loan in its name;
    9. capitalise, repay or distribute money or credit from its reserves or any of its distributable profits, by dividend or otherwise;
    10. change the financial year of the Company or make any change to the accounting policies and principles adopted by the Company;
    11. permit the registration (upon subscription or transfer) of any person as a shareholder of the Company;
    12. create or grant any debenture, mortgage or charge (whether fixed or floating) or any other security over the whole or any part of its assets;
    13. take major decisions relating to the conduct of material legal proceedings to which the company is a party, and for these purposes:

14.1.14.1 'conduct' includes the settlement of a claim; and

14.1.14.2 a potential liability, or claim, in excess of € <<insert amount e.g. 50,000>> is to be regarded as material;

* + 1. **[**incur expenditure in respect of any assets in excess of €<<insert amount >> or any other sum which the parties may agree from time to time;**]**
    2. **[**make any payments in excess of €<< insert amount >>;**]**
    3. hold any meeting of Shareholders or purport to transact any business at any such meeting unless duly authorised representatives or proxies for each of the Shareholders are present;
    4. adopt or amend the Constitution of the Company;
    5. alter any rights or restrictions attached to any class of shares in the capital of the Company;
    6. change the Company's name;
    7. pass any resolution or engage in any other matter which represents a substantial change in the nature of the Company's business or in the manner in which that business is conducted;
    8. remove any director appointed under Clause 8;
    9. issue any additional shares otherwise than in accordance with the provisions of this Agreement.
    10. pass any resolution for winding-up the Company when it is not insolvent.
    11. << insert any other matters >>

# Dividend policy and procedure

* 1. The Shareholders shall ensure that the Directors comply with the following provisions.
  2. Dividends shall be paid only in accordance with the Act and the Constitution.
  3. The Company may by ordinary resolution declare dividends.
  4. A dividend must not be declared unless the Directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the Directors.
  5. **[**No dividend shall be paid until the annual accounts of the Company have shown a profit after tax of at least €<<insert amount >> for at least three consecutive years**]**.

# Intellectual Property

* 1. Schedule 1 of this agreement correctly records the ownership of Intellectual Property owned by any IP Shareholder.
  2. Nothing in this agreement shall prevent a Shareholder from entering into an arm's length agreement with the Company for use of his Intellectual Property.
  3. If any Shareholder (the "IP shareholder") owns Intellectual Property which has been or is currently used by the Company ("SHIP"), the following terms shall apply.
  4. In the absence of any other documented licence agreement between the Company and the IP shareholder, the IP shareholder shall be deemed to have granted a licence to the Company in the terms and for the purposes in which it has hitherto been used, for the licence fee of €1 per year.
  5. The IP Shareholder may at any time restrict any deemed licence on giving 3 months' written notice to the Company.
  6. If, on expiry of the 3-month notice period, the IP shareholder and the Company shall have failed to make a new agreement, the deemed licence shall be construed as a licence in the following terms:
     1. The IP shareholder shall have no claim, nor shall the Company suffer any loss in respect of the past use of the SHIP by the Company.
     2. The IP shareholder grants whatever licence to the Company as is necessary to enable the Company to maintain, and avoid breach of, every sub-licence of the SHIP to every customer or client to whom any formal or unrecorded licence has been granted in the course of the Company’s business.
     3. All other deemed licences shall terminate, so that the Company may not continue to use the SHIP.
     4. The Company will acknowledge that it has no right or interest in the SHIP, except as stated in this paragraph.

# New Intellectual Property

* 1. Each shareholder understands that whilst associated with the Company, he/she may discover or create Intellectual Property. Each shareholder now agrees that if he/she is or becomes involved in any way with the creation or improvement or discovery of Intellectual Property he/she will:
     1. do his/her utmost to ensure that the Company acquires or retains the rights in that property;
     2. inform the Company reasonably soon after any such creation or discovery;
     3. provide to the Company whatever full code, passwords, specification, description, text or drawings as are together necessary to enable the Intellectual Property to be used, registered or protected by the Company.
  2. To make this effective each shareholder now undertakes to do whatever is reasonably necessary or desirable to enable the Intellectual Property to be transferred into the name of the Company or otherwise to secure ownership by the Company.
  3. If Intellectual Property owned by a shareholder and used by the Company with his/her permission, is incorporated into an object or product which is clearly different from its original form, then the shareholder who owns that intellectual property is deemed to have no claim on the new intellectual property formed, in part at least, from his original.
  4. This paragraph does not apply to Intellectual Property created by a shareholder in connection with a business which is not related to the Business of the Company and not competitive with it.

# Assets introduced by a Shareholder

* 1. This paragraph does not apply to Intellectual Property.
  2. The assets listed under the name of each Shareholder in Schedule 2 are owned by that Shareholder.
  3. This paragraph applies to those assets and also to any other assets owned by a shareholder, which are used by the Company from time to time.
  4. Unless a clear intention of gift is shown, all such assets shall remain the property of the shareholder who owns them.
  5. Each Shareholder, who has permitted his assets of any description to be used by the Company, hereby grants a licence to the Company for its continued use of the assets. This licence:
     1. is limited to use by the Company in its own business;
     2. prohibits reproduction in any form, of the asset licensed;
     3. shall terminate at any time on giving three months’ notice in writing to the company secretary.

# Confidentiality

* 1. Each Shareholder agrees and undertakes that he/she will:
     1. not remove from Company's premises or copy or allow anyone else to copy from any document, computer disk, tape or other tangible item which contains any Confidential Information except as may be necessary in the course of his work for the Company;
     2. in respect of any part of the Confidential Information of the Company, from today until the expiry of five years from the termination of this agreement, keep it secret and not divulge or make it known to anyone nor use it for the benefit of himself or any other person.
     3. comply with the law regarding protection, disclosure, and processing of personal information.
  2. This paragraph does not apply to disclosure:
     1. made with the consent of the proper officers of the Company or under the authority of the Directors or by order of the court.
     2. of information or knowledge which comes into the public domain otherwise than by reason of his default.
     3. as may be necessary in the course of his work for the Company.

# General provisions relating to shares

* 1. Other than Permitted Transfers no Shareholder shall assign, mortgage, charge, or otherwise encumber, any share or other rights or obligations under this Agreement without the prior written consent of all the Shareholders of the Company.
  2. A Shareholder may freely dispose of some or all of his/her shares to his/her spouse or life partner of at least three years, or his/her child, or to the trustees of a trust in which that person / any of those people is/are named exclusively, as beneficiaries.

# Issue of Shares

* 1. If the Company wishes to issue any additional Shares for cash the parties shall procure that it shall give notice to each Shareholder, stating the number of Shares to be issued (the 'Additional Shares') and the price per Share to be subscribed for (the 'Company's Notice').
  2. Each Shareholder shall have the option, but not the obligation, to subscribe at the price set out in the Company's Notice for that proportion of the Additional Shares which the number of Shares held by him/her bears to the total number of Shares outstanding at the time the Company gives its notice.
  3. Any option under clause 21.2 above may be exercised by giving notice to the Company at any time within << insert days e.g. 30 >>days beginning with the date of the Company's Notice, together with payment in full for the Shares to be subscribed for.
  4. The Company may issue any Additional Shares in relation to which Shareholders do not exercise their options in the manner stated in the Company's Notice, provided that the sale is completed within << insert days e.g. 60 >> days beginning with the date of the Company's Notice.

# Share sale by Shareholder

* 1. **[**No Shareholder shall be entitled to sell or dispose of their shares for a period of three (3) years of full trading by the Company;**]**
  2. If a Shareholder (the **"Seller"**) wishes to sell all or any of his/her shares, he/she must first offer them to the existing Shareholder by giving a Transfer Notice (the **“Transfer Notice”**) to the Company.
  3. Except in the circumstances described in Clause 29, the price at which the Sale Shares are sold shall be the **“Sale Price”** agreed by the Seller and the Shareholders and if the Seller and the Shareholders are unable to agree a price within 28 days of the Transfer Notice the Sale Price shall be the **“Fair Price”** as determined by the Accountant on a going concern basis (if appropriate) as between a willing seller and a willing buyer ignoring any reduction in value which may be ascribed to the Sale Shares by virtue of the fact that they represent a minority interest or majority interest and on the assumption that the Sale Shares are capable of transfer without restriction.
  4. If the Accountant is asked to determine the Fair Price, as soon as the Company receives his/her determination it will provide a certified copy to the Seller and the Seller shall be entitled within 10 days of receipt of the certified copy to cancel the Company’s authority to sell the Sale Shares by notice in writing. The cost of obtaining the accountant’s determination of Fair Price shall be borne by the Company unless the Seller has given notice of his/her cancellation, in which case the Seller shall bear the cost.
  5. The Transfer Notice shall be conditional only upon acceptances being received for all of the Sale Shares.
  6. The Transfer Notice shall not be revocable except with the consent of the Directors and shall constitute the Company as the agent of the Seller for the sale of the Sale Shares.
  7. Promptly after the Transfer Notice is received, the Directors shall send a copy of the Transfer Notice to each shareholder and a notice for the number of such shares he/she may buy, in proportion to the shares already held by that shareholder.
  8. A Shareholder wishing to accept any or all of the shares offered to him/her shall give written notice of his/her acceptance to the Seller and to the Company within 21 days of receipt of the Transfer Notice or notification of the Fair Price. Payment of the Sale Price shall be tendered with the notice of acceptance.
  9. If such notice is not received by the Company within 21 days, that Shareholder is deemed to have declined the offer.
  10. A notice of acceptance shall be irrevocable and shall give rise to a legally binding and unconditional contract between the Seller and the buying Shareholder, conditional only upon acceptances being received for all of the Sale Shares.
  11. The Sale Shares shall be sold free from all charges and with full title guarantee at the Fair Price and together with all rights attaching to the Sale Shares on or after the date of the Sale Notice.
  12. In exchange for the Sale Price, the Seller shall deliver to the buying Shareholder a signed share transfer form in respect of the Sale Shares bought by him/her together with the share certificate(s) for the Sale Shares.
  13. If the Seller fails to comply with the procedure set out above, the Company may act as his/her agent on his/her behalf without confirmation or further instruction.
  14. If in respect of all or any Sale Shares the Seller's offer lapses or is declined by the other Shareholder, then the Seller shall at any time within six months after the final offer by the Company to its Shareholders be at liberty to sell and transfer the entire legal and beneficial interest in any Sales Shares that have not been sold to any person at the Sale Price.
  15. In the event of the death of any Shareholder being an individual, he or she (or their personal representatives) shall be deemed to have given a Transfer Notice in respect of his/her shares, in which event the provisions of Clause 28 shall apply.
  16. The Board shall refuse to register any transfer of Shares and shall not issue any Shares to any person (other than a Shareholder) who has not, prior to the transfer or issue, entered into an agreement in the form of the deed of adherence set out in Schedule 4 whereby the transferee has covenanted with the remaining Shareholder to become a party to this Agreement and to be bound by the terms and conditions.

**23. [Drag along rights**

* 1. If the Majority Shareholder of the entire issued share capital of the Company (the **“Selling Shareholder”**), wishes to transfer all of his/her interest in his/her shares to a bona fide arm’s length Third Party Purchaser, the Selling Shareholder shall have the option, subject to Board consent ( not to be unreasonably withheld), to require the remaining Shareholder to sell and transfer his/her shares to the Third Party Purchaser (the **“Drag Along Right”**) in accordance with this Clause 23.
  2. The Selling Shareholder may exercise this option by giving 14 days written notice (a “**Drag Along Notice”**) to the other Shareholder.
  3. The notice shall specify that the Shareholder is required to transfer all his/her shares, the person to whom they are to be transferred, the Fair Price and the proposed date of the transfer.
  4. Such a notice shall be irrevocable but will lapse if for any reason there is not a sale to the Third-Party Purchaser within 90 days after date of service of the notice.
  5. **[**The Selling Shareholder shall be entitled to serve further Drag Along Notices following the lapse of any particular Drag Along Notice**]**.
  6. If any of the Shareholders fail to execute a transfer in respect of the shares under this Clause 23 such defaulting holder shall be deemed to have irrevocably appointed the Chairperson of the Company (or failing the Chairperson, the Company Secretary) to be his/her agent and attorney to execute all necessary transfers on his/her behalf.**]**

**24. [Tag along rights**

24.1 If the Majority Shareholder serves a Seller`s Notice the Minority Shareholder shall have the option (the “Tag Along Right”) but not the obligation to require the proposed transferee named in the Seller`s Notice to purchase from him/her his/her shares, for the same consideration per share and upon the same terms and conditions as to be paid and given to the Selling Shareholder.

* 1. Within 30days following the delivery of a Seller`s Notice, the Minority Shareholder who elects to exercise the Tag-Along Right shall deliver a written notice of such election to the Selling Shareholder, specifying the number of Shares with respect to which he/she has elected to exercise the Tag-Along Right. Such notice shall be irrevocable and shall constitute a binding agreement by the remaining shareholder to transfer such Shares on the terms and conditions set forth in the Seller`s Notice. In order to be entitled to exercise the Tag-Along Right, the remaining shareholder must make substantially the same representations, warranties and indemnities as the Selling Shareholder makes in connection with his transfer of Shares.

24.3 Where the Minority Shareholder has properly elected to exercise the Tag-Along Right and the proposed transferee fails to purchase Shares from such Shareholder, the Selling Shareholder shall not make the proposed transfer, and if purported to be made, such transfer shall be null and void.

24.4 In connection with any proposed transfer, the Minority Shareholder shall:

24.4.1 first have a first offer right with respect to the transferred Shares; and

24.4.2 then have a Tag-Along Right with respect to the transferred Shares in accordance with Clause 24.1. No Shareholder shall transfer any Shares, in each case except in connection with a permitted transfer, until all of the procedures set forth in this Clause in respect of such transfer have been completed.

* 1. Without prejudice to any other provision of this Agreement:
     1. the Selling Shareholder shall give prompt notice to the Company and the other Shareholder of any proposed transfer (including without limitation any grant of any direct or indirect economic interest or voting power and any Permitted Transfer) of the Shares by such Selling Shareholder; and
     2. the Shareholder shall give prompt notice to the Company of any such transfer of which it becomes aware that has not already been notified by the Selling Shareholder as provided above.**]**

**25. Procedure after transfer**

If, at any time, and for any reason, a Shareholder ceases to be a Shareholder, he/she will immediately:

25.1 resign as a Director of the Company and from any other office connected with the affairs of the Company without compensation for loss of office;

25.2 immediately transfer to whomever the Company directs, any shares in any company held by him/her as nominee of the Company;

25.3 irrevocably authorise the Company to appoint some other person to sign his/her resignations on his/her behalf;

* 1. not from that time represent to anyone that he/she is still a Director or shareholder of the Company or associated with it;
  2. return to the Company without request all property owned by the Company whether or not he/she perceives such property to have value;

25.6 delete all Confidential Information from any computer disks, tapes or other media;

25.7 not contact or communicate with any customer, supplier, or employee of the Company;

If he/she fails to comply with any provision of this paragraph where compliance could be achieved by the signing of some document or doing of something by someone else, then he/she now irrevocably authorises the Company to appoint some person in his/her name and on his/her behalf to sign any document or do any such thing (without prejudice to any claims which he/she may have against the Company arising out of this agreement or its transfer).

# 26. Shareholder's continuing rights and obligations

* 1. This agreement shall be binding upon the successors and permitted assignees of each Shareholder.
  2. The rights and obligations of a Shareholder shall cease on the Transfer Date, except that the following obligations shall remain in full force and effect:
     1. any right or obligation arising from this agreement and outstanding and unsatisfied at the Transfer Date;
     2. any right or obligation arising from his/her employment by the Company or his/her connection with it;

# 27. Restrictions on Shareholder after transfer

Each Shareholder covenants jointly and severally with one another and the Company that:

* 1. after the Transfer Date, he/she will continue to acknowledge the ownership by the Company of any Intellectual Property rights of the Company at any time the Company may call upon him/her to do so;
  2. he/she will not within << three >> years of the Transfer Date directly or indirectly, advise, instruct, do or assist in any activity the effect of which is to promote the sale of any product or service which competes with any product or service offered for sale by the Company within the period of << three >> years immediately preceding the Transfer Date.
  3. the restrictions imposed by the last previous clauses extend only to the area covered by the counties of << insert counties or Zone >> or such other areas, whether more or less in expanse, as contain one or more customers of the Company;
  4. he/she will not within << three >> years of the Transfer Date directly or indirectly, advise, instruct, do or assist in any activity the effect of which is to encourage any person to breach any contract between that person and the Company;
  5. he/she will not within << three >> years of transfer, directly or indirectly, employ or provide work to any person who was employed by or who worked as a contractor for the Company within the period of three years immediately preceding the Transfer Date;
  6. he/she will not within << three >> years of transfer, either on their behalf or on behalf of other persons directly or indirectly solicit or endeavour to solicit the services of any person employed by the Company;
  7. the provisions of this paragraph are fair and reasonably required for the protection of the Company.
  8. In the event of any covenant contained in this clause 27 being held unreasonable by reason of area, duration, type or scope of restriction contained in it the said covenant shall be given effect in its reduced form as may be decided by any court of competent jurisdiction.

# Transfer of shares on death or incapacity

* 1. A PR must, as soon as this provision comes to his/her notice, notify the Directors of a Relevant Event whereupon the following provisions shall take effect.
  2. Relevant shares shall not be re-registered in the name of any person unless the PR agrees to, and partakes in, the following procedure.
  3. Notice of a Relevant Event by a PR shall be irrevocable and shall be deemed to constitute an unconditional offer for sale of the Relevant Shares at the Fair Price in accordance with the procedure here set out.

28.4 Promptly after notice of a Relevant Event has been received by the Directors, the auditors of the Company shall be instructed to determine the Fair Price of the Relevant Shares. The cost of such work shall be payable by the PR.

* 1. Any such offer shall be deemed to have been made:

28.5.1 to the Company which shall have the right to accept any or all of the Relevant Shares (if it is lawfully able to do so) by written notice given by it to all shareholders within 14 days of the notification of the value of the Relevant Shares; or

* + 1. if or to the extent that any offer made to the Company is not accepted, then to all shareholders in proportion to the number of shares owned by them at the date of the Relevant Event.
  1. A Shareholder wishing to accept any or all of the shares offered to him/her shall give written notice of his/her acceptance to the Company within 21 days of the notification of the Fair Price. If such notice is not received by the Company within 21 days, that Shareholder is deemed to have declined the offer.
  2. A notice of acceptance shall be irrevocable and shall give rise to a legally binding and unconditional contract between the Company or the person giving it and the PR whereby the PR shall transfer to the Company or the shareholder the appropriate shares and the Company or the Shareholder shall pay the Fair Price.
  3. If neither the Company nor the Shareholder accept the offer to buy the Relevant Shares, then the Company shall buy the shares within six months of the offer having been made at the price of 90% of the Fair Price.

# Transfer of shares on bankruptcy

* 1. If a bankruptcy order is made against either Shareholder, the remaining Shareholder shall offer to buy the shares of the bankrupt Shareholder from his/her trustee on the following terms:
     1. the remaining shareholder shall appoint one of their number to negotiate with the trustee.
     2. the price offered shall be the minimum price reasonably obtainable;
     3. as between the remaining Shareholder, he/she shall be entitled to buy shares pro rata with his/her existing holding, so as to preserve the proportions held by him/her;
     4. if the remaining Shareholder does not wish to buy his/her proportionate number of shares, he/she need not do so.

# 30. Deemed Transfers

* 1. This Clause applies in any of the following circumstances:
     1. Where the Majority Shareholder is an employee of the Company, his/her employment is terminated by the Company;
     2. the Majority Shareholder goes into liquidation whether compulsory or voluntary (except for the purposes of a *bona fide* reconstruction or amalgamation with the consent of the Minority Shareholders, such consent not to be unreasonably withheld);
     3. the Majority Shareholder has an administrator appointed or a receiver, administrative receiver or manager is appointed over any part of its assets or undertaking of the Majority Shareholder;
     4. either Shareholder commits any material breach of any of his/her obligations under this Agreement and fails to remedy that breach (if capable of remedy) within <<insert days e.g. 30>> days after being given notice by the Minority Shareholder requiring him/her to do so;
  2. The Shareholder in relation to which any event set out in Clause 30.1 above occurs shall be deemed to have given (and the other Shareholder shall be deemed to have received) a Seller’s Notice in due form in respect of all of the Shares held by him/her on the day preceding the event.
  3. The other Shareholder shall have the irrevocable option but not the obligation to purchase any or all of the Offered Shares for the price per share in accordance with Clause 22 payable in cash on delivery of the executed transfer and relative certificate.

# 31. Winding Up

* 1. If at any time an obligation to wind up the Company arises the Shareholders shall immediately take all necessary steps to secure the timely winding up of the Company. The Shareholders shall cast all necessary votes at a General Meeting of the Company and shall cause the directors of the Company nominated by them to cast all necessary votes at a board meeting to approve the winding up of the Company, in addition to any other steps which are required to secure the winding up of the Company.

31.2 The Shareholders shall ensure that the liquidator is a properly licensed insolvency practitioner agreeable to all Shareholders. If the Shareholders are unable to come to an agreement the Company’s Auditors shall appoint the liquidator.

31.3 In order to recover the fullest amount that may be available from the Company in its winding up the Shareholders shall prove to the maximum extent permitted by law all sums due or set to fall due to them from the Company and in doing so may avail themselves of any right of set-off or other act or mechanism that may be available to them.

# Publicity

No public or press announcement shall be made about the subject matter of this agreement unless the text has been first approved by all the parties.

# Conflict with the Constitution

If any conflict arises between this Agreement and the Constitution of the Company, then:

* 1. as between the Shareholders, this agreement shall prevail;

33.2 the Shareholders shall procure whatever modification is necessary to the Constitution to cure the conflict.

**34.** **Representations**

Each of the Shareholders represents to the other(s) that he/she has taken all necessary other actions to enable him/her validly to accept and perform the obligations required under the terms of this Agreement and that performance of the provisions of this Agreement will not result in a breach of or constitute a default under any agreement or other contractual restriction binding upon him/her.

# Miscellaneous matters

* 1. This agreement does not create any partnership between the parties and the Company.
  2. No amendment or variation to this agreement is valid unless in writing, signed by each of the parties or his authorised representative.
  3. This agreement may be executed in multiple counterparts. All such counterparts when executed will be deemed to be an original, all of which will constitute one and the same agreement.
  4. In the event of a dispute arising out of this agreement the parties undertake to attempt to settle it through professional mediation before commencing litigation.
  5. If the extent only, of any part or provision of this agreement is held to be unlawful, void or unenforceable, then that part or provision shall be deemed to be reduced so far as to permit it to become valid and enforceable without affecting the remainder of the agreement.
  6. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
  7. Any obligation in this agreement intended to continue to have effect after termination or completion shall so continue.
  8. This agreement does not give any right to any third party.
  9. Any communication to be served on either party by the Company or other party shall be delivered by hand or sent by first class post or recorded delivery or by e-mail.

It shall be deemed to have been delivered:

if delivered by hand: on the day of delivery;

if sent by post to the correct address: within 72 hours of posting;

if sent by e-mail to the address from which the receiving party has last sent e-mail: within 24 hours if no notice of non-receipt has been received by the sender.

* 1. The validity, construction and performance of this agreement shall be governed by the laws of the Republic of Ireland and the parties agree that any dispute arising from it shall be litigated only in that country.

**IN WITNESS WHEREOF** <<insert company name >> have affixed their common seals and the Shareholders hereto have signed their names the day and year first herein written.

**SIGNED, SEALED AND DELIVERED**

By the said << name of Majority Shareholder >>

In the presence of:-

**SIGNED, SEALED AND DELIVERED**

By the said << name of Minority Shareholder >>

In the presence of:-

**PRESENT** when the **COMMON SEAL**

Of << insert company name >>

Was affixed hereto:-

## Schedule 1 - Existing IP owned by IP shareholder

<< Provide the list of any existing IP owned by Shareholder >>

## Schedule 2 - Ownership of assets used by the Company

*<< Provide a list of ownership of any assets used by the Company >>*

**Schedule 3 - Letter of instruction to accountants for valuation**

On the letterhead of the company

To: << insert name of accountants >>

Dear Sirs

Shares valuation - this company

This letter is by way of instruction from the directors to you on behalf of the company. The instruction is to place a value first on all the shares of the company and second on a holding representing << insert % >>% of the shares in issue.

To assist you we now enclose:

* the accounts for the last three years in full not filed, version;
* monthly management accounts since the date of the last published accounts;
* details of the current and forward order book;
* budget for the next << insert number of years e.g. 2 >> years;

You may well need other documents which we shall be pleased to supply on request.

**[**We seek your advice as a preliminary point on the most appropriate basis of valuation, but in any event we shall ask you to make appropriate adjustments for the items listed below:**]**

**OR**

**[**Please make your valuation on the following assumptions:**]**

1. That the transaction is between a willing seller and a willing buyer at arm's length.
2. That any restrictions on the transfer of shares by this agreement or by the constitution of the company are to be ignored.
3. That the appropriate yardstick for a valuation is the value placed on companies in the same business as this company and whose shares are publicly listed, **[**discounted by x%**]**.
4. That the appropriate yardstick for a valuation is a multiple of x times the net profit before / after tax, and after having made the adjustments listed below.
5. That the appropriate yardstick for a valuation is the net value of the assets of the company, including / excluding all goodwill and intellectual property.
6. That the appropriate yardstick for a valuation is to take the average profit before tax of the last three years, then add back:
   1. depreciation,
   2. salary payments to the directors,
   3. other emoluments of the directors,
7. That the remuneration, benefits and pensions of directors are at market rates (which you may judge to be more or less that the figures paid and shown in the accounts).
8. That the company is a going concern and will continue to be so.
9. That there is no outstanding or anticipated litigation not disclosed to you.
10. That no director is aware of any fact which may materially change your valuation.
11. That the directors believe it is unlikely that the shares of the company will be offered for sale to the public and arrangements made for its shares to be traded in any public market within the next three years.
12. That they are aware of no approach which could result in an offer from a third party for all or a substantial proportion of the shares in the company.

Yours faithfully,

**Schedule 4 – Deed of Adherence**

**This agreement is made on** << insert date >>

**BETWEEN**

1. << Name of Company >> (a company incorporated and registered in the Republic of Ireland with company number << insert registration number >> whose registered office is at << insert registered address >> (**Company**);
2. The persons whose names and addresses are set out the body of this agreement (**Shareholders**);
3. << name of new shareholder >> of << home/registered address >> (**New Shareholder**).

**BACKGROUND**

This agreement is supplemental to a Shareholders Agreement dated << insert date >> and entered into by << details >> (**Shareholders Agreement**).

The New Shareholder wishes to subscribe for Ordinary Shares.

**OPERATIVE PROVISIONS**

1. The definitions contained in the Shareholders’ Agreement will have the same meanings in this agreement save where the context otherwise requires.
2. The New Shareholder confirms (subject to paragraph 3 below) that they have been given and read a copy of the Shareholders Agreement and covenants with each person named in the Annex to this agreement to perform and be bound with effect from the date of this agreement **OR** with effect from the date on which the New Shareholder is registered as a member of the Company by all the terms of the Shareholders Agreement as if the New Shareholder was a party to the Shareholders Agreement as a Shareholder. By executing this agreement, all parties confirm that it is the intention that the New Shareholder shall be bound by and entitled to the benefit of the provisions of the Shareholders’ Agreement as if they were party to the Shareholders Agreement and named in the Shareholders Agreement as a Shareholder.
3. This agreement may be executed in any number of counterparts, each of which when executed will be an original but together will constitute one and the same agreement.
4. This agreement will be governed by and construed in accordance with the laws of the Republic of Ireland.

Signed by << full name of Director >> , duly authorised on behalf of the Company

Signed by << full name >>, a shareholder: